UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

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GERARD T. OUIMETTE,
Petitioner

No. 99-489-T

v.

UNITED STATES OF AMERICA,
Respondent

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AFFIDAVIT OF RICHARD EGBERT, ESQ.

I, RICHARD EGBERT, make affidavit and state:

1. I am an attorney with offices at 99 Summer Street, Suite 1800, Boston, MA 02110. I am admitted to practice in the Commonwealth of Massachusetts and before the United States District Court for the District of Massachusetts, the United States Court of Appeals for the First Circuit and the United States Supreme Court. I have also been admitted *pro hac vice* in numerous jurisdictions, including Rhode Island.

2. I have been a practicing attorney since 1972. My practice is concentrated in the area of criminal law representing persons charged with crimes in State and Federal Courts throughout the United States.

3. In the spring of 1995 I was retained by Gerard T. Ouimette to represent him in the matter of United States v. Gerard Ouimette, Ind. No. 95-0029 wherein Mr. Ouimette was charged along with Robert DeLuca and James Gellerman[1] with extortion of Paul Calenda and David Duxbury.

4. Following the denial of my pretrial Motion to Sever Defendants, Mr. Ouimette was tried before a jury along with codefendant Robert DeLuca who was represented by Anthony Cardinale, Esq., Boston, MA.

5. Prior to the trial Mr. Ouimette and I met to discuss the government's case including audiotape recordings of conversations between my client and government witnesses. Mr. Ouimette's defense was that he did not extort Calenda or Duxbury and did not direct, sanction or participate with government witness James Gellerman who did assault them.

[1] On the day trial began, James Gellerman pleaded guilty and agreed to become a cooperating government witness.

EX. A

6. Mr. Ouimette and I discussed defense options especially the importance of discrediting the government witnesses and explaining the contents of the audiotapes. In my view this could be accomplished by cross examination. The issue of Mr. Ouimette taking the stand in his own defense was not discussed this early on in the case although he may have brought his desire to do so to my attention.

7. The government's case rested primarily on the credibility of one of the alleged victims, David Duxbury, and government informants, Paula Coppolla and James Gellerman and audiotape recordings between my client and government informants Paula Coppolla and Robert Beuhne.

8. Paul Calenda, one of the alleged extortion victims, did not testify and was not available for cross examination regarding the substance of the alleged extortion.

9. Robert Beuhne, a key government informant did not testify and was not available for cross examination despite the fact that he played an integral part in the events that led to my client's arrest and indictment. His voice is identified and heard on the audiotape recordings with my client used by the government as evidence of the alleged extortion of Paul Calenda.

10. My trial strategy was to discredit the available witnesses through cross examination and through cross examination present to the jury an alternative explanation of my client's conduct and his statements on the government's tape recordings. Calling Mr. Ouimette to testify in his own defense was not part of my trial strategy.

11. During the course of the trial there came a time when my client raised the issue of testifying in his own defense. I told him I was opposed to his doing so and continued with my original trial strategy.

12. At one point during the trial, Mr. Ouimette believed that counsel for his co-defendant was conducting his client's defense so as to implicate my client and exonerate his client, Robert DeLuca. I explained to Mr. Ouimette that this approach was the result of the court's denial of my motion to sever defendants that made it extremely difficult for me to conduct his defense.

13. During the course of the trial my client would from time to time ask for my assessment of the outcome. Sometime around the middle of the trial I told my client that he could "lose this case." My client responded by saying that his only chance of an acquittal was to take the stand in his own defense. He told me he wanted to take the stand.

14. Mr. Ouimette continued to insist on taking the witness stand after the government rested its case. There is no question that Mr. Ouimette wanted to testify in his own defense. I continued to counsel him to the contrary in accordance with my professional judgment. In fact, I was vehemently against the idea.

15. Mr. Ouimette wanted to testify so he could deny his involvement, explain his version of the facts and describe the circumstances surrounding many of the conversations on the government's audiotapes. Mr. Ouimette and I argued at length in this regard and I presented my position to him forcefully.

16. I was "dead set" against Mr. Ouimette testifying and I did my best to dissuade him from doing so. I did not call Mr. Ouimette to the witness stand. He did not testify in his own defense and the jury did not have an opportunity to determine if his testimony would have been credible.

Signed under the pains and penalties of perjury this 19th day of March, 2008.

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